IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.719 of 2006

Shri Kashinaath Jeevan Thakur — Petitioner
Vs.
Smt.Bebibai Balaram More & ors. — Respondents

Mr.P.J.Shinde for petitioner.
Mr.A.J.Joshi and Mr.S.H.Joshi for Resp.Nos.1 to 7.

CORAM: B.H.MARLAPALLE,J.

June 21, 2006.

P.C.

. Regular Civil Suit No.90 of 2005 was filed before the learned Jt. Civil Judge, Junior Division at Palghar and in the same the present petitioner-defendant filed an application at Exhibit 23 pointing out that the suit was wrongly valued and as per the valuation of Rs.1,02,000/- the suit ought to have been presented before the learned Civil Judge, Senior Division. This contention was upheld by the learned Jt.Civil Judge, Junior Division and by his order dated 7/10/2003 the plaint was returned to the plaintiffs to present it before the proper Court on the same day.

. However, the plaintiffs instead of presenting the suit to the learned Civil Judge, Senior Division at Palghar on 7/10/2003 filed an application

registered as Misc.Application No.9 of 2005 belatedly under Section 5 of the Limitations Act before the learned Civil Judge, Senior Division at Palghar on or about 27/4/2005 for condonation of delay and to accept the plaint which was returned by the learned Jt.Civil Judge, Junior Division. This application was opposed by the defendant -petitioner and by the impugned order dated 28/10/2005 the objection of the defendant has been turned down and the delay has been condoned by levying cost of Rs.500/-.

. The provisions of Rule 10 and 10A of Order VII of CPC are clear and if the plaintiff was unable for any reason whatsoever to present the returned suit to the learned Civil Judge, Senior Division on 7/10/2003, it was necessary for him to file an application before the earlier Court i.e. the Court of the learned Jt. Civil Judge, Junior Division for extension of time to present the plaint to the appropriate Court. This was not done for almost six months and thereafter an application for condonation of delay came to be filed. The learned counsel for the petitioner is right in his submissions that such an application could not have been entertained by the learned Civil Judge, Senior Division and it was

permissible for the plaintiff to file a fresh suit before the learned Civil Judge, Senior Division at Palghar for the very same cause of action.

. The learned counsel for the original plaintiff and the present respondent no.1, therefore, states that a fresh suit would be filed by the plaintiff before the learned Civil Judge, Senior Division and the petitioner-defendant would be at liberty to raise all issues including the issue of limitation in his written statement to be filed.

. Hence the petition is disposed off with liberty to the plaintiff to present a fresh suit and by withdrawing the one already presented to the learned Civil Judge, Senior Division with enhanced stamp fees of Rs.12,360/-. The rights of the defendant-petitioner to oppose the suit on all counts remain in-tact.

(B.H.MARLAPALLE,J.)